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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.747 OF 1988

The State of Maharashtra	) ... Appellant
Versus	
1. Anil Tanhu Dhamunse, age 20 years, Occu: Agriculturist.	)))
2. Janabai Tanhu Dhamunse, age 50 years, Occu: Agriculturist.	)))
3. Lata Dnyanoba Dhamunse, age 11 years, Occu: Household.	)))
4. Suresh Tanhu Dhamunse, age 28 years, Occu: Agriculturist.	)))
All residing at Hirdoshi, Taluka, Bhor, Dist. Pune.	)) ... Respondents (Orig. Accused Nos.1, 2 3 and 5.)

Mr. I. S.Thakur, Addl. P.P. for the State-appellant.

Mr. Rahul S. Kate for the respondents-accused.

CORAM: SMT. RANJANA DESAI &
A.S. OKA, JJ.

DATED: 13TH SEPTEMBER, 2004.

ORAL JUDGMENT :- (Per Smt. Ranjana Desai, J.)

1. The respondents (for convenience, original accused 1, 2, 3 and 5 respectively) were tried in Sessions Case No.47 of 1988 in the court of Additional Sessions Judge at Pune, for the offences punishable under section 302, 449, 323, 201 and 176 read with section 34 of the Indian Penal Code (for short, "the IPC").

2. By judgment and order dated 8/7/1988, the learned Sessions Judge convicted accused 1 under section 325 of the IPC and sentenced him to suffer R.I. for eight months and to pay a find of Rs.500/- in default, to undergo further R.I. for one month. Accused 4 was convicted under section 201 of the IPC and sentenced to suffer R.I. for 15 days and also to pay a fine of Rs.500/- in default, to suffer further R.I. for one month. Accused 2, 3 and 5 were acquitted of all the charges. Being aggrieved by the said judgment and order so far as it acquits the accused of the charges the State of Maharashtra has approached this court by the present appeal.

3. At the trial, the case of the prosecution was as follows. Deceased Balu Vithu Dhamunase was the permanent resident of village Hirdoshi. He was also the police Patil of the village. He was a widower. He had no children. The deceased used to get his meal prepared from the maid. She was the aunt of PW-1 Banubai. After her death, PW-1 Banubai started working as a maid with the deceased. She used to cook his meals at his residence.

4. The deceased was the uncle of accused 1, 4 and 5. Accused 2 is the mother of accused 1, 4 and 5. Accused 3 is the wife of accused 4. All the accused were living jointly under a common roof in the village Hirdoshi.

They did not like Banubai working as a maid with the deceased. On a number of occasions, they had told her not to go to his house for preparing food. However, Banubai was adamant. She continued to serve the deceased.

5. Angered by this, on 15/9/1987, the accused took sticks in their hands and went to the house of the deceased. PW-1 Banubai was there. They questioned her why she had not stopped coming to the house of the deceased. PW-1 Banubai ignored them. The accused, therefore, started beating her with sticks in the presence of the deceased. The deceased pushed accused 2 and 3 out of the house. Accused 1 was standing in front of the house with a stick in his hand. When he saw his mother and wife of his brother being dragged, he started giving stick blows on the person of the deceased. The deceased suffered bleeding injuries on his head and face. He fell down on the ground and succumbed to the injuries. PW-1 Banubai ran away to her house. According to her, after sometime, accused 4 came to her house and threatened her that she should not speak about the incident to anyone and told her that in case she opens her mouth she would be killed. He also instructed her to tell that the deceased had died due to consumption of liquor. Out of fear, PW-1 Banubai did not tell anybody about the incident. It appears that after 2 to 3 days, she reported to the police that she was beaten by the accused on 19/9/1987. She was then sent for medical

check up by the police.

6. The corpse of the deceased was kept covered in the sitting position in the quilt on the Ota of his house. On the next day, in the morning, at about 10.00 a.m., the corpse was shifted to the cemetery for last rites. It was laid down on the pyre and it was lit by accused 4. At that time, the village police Patil Vasant Bhelke came there. He tried to prevent the burning of the dead body as he was suspecting foul play. He had also seen the dead body on the Ota being kept covered in the early hours at 7.00 a.m. As the last rites were being performed hurriedly, he suspected mischief and therefore, he complained to the police on 17/9/1987. The said complaint is at Ex-14.

7. Initially, a case of accidental death was registered. During investigation, it transpired that the death was not accidental but it had occurred due to the injuries sustained by the deceased which were caused by accused 1. It also came to light that accused 4 had, without giving intimation to the police about the sudden death of the deceased, hurriedly cremated the dead body with an intention to ensure that the evidence disappears. After completion of the investigation, the accused came to be charged as aforesaid.

8. At the trial, the prosecution examined as many as 13 witnesses. The star witnesses of the prosecution

appear to be PW-1 Banubai and PW-2 Bhaguji Vasivale. These two witnesses are the eye-witnesses. Since the body was cremated even before the post-mortem could be conducted, there is no medical evidence on record to indicate what kind of injuries were suffered by the deceased. The learned judge, after perusing the evidence on record, came to the conclusion that accused 1 was guilty of offence punishable under section 325 of the IPC and that accused 4 caused the evidence to disappear. He, therefore, convicted accused 4 for offence under section 201 of the IPC. The learned judge was also of the view that accused 4 failed to give information in respect of the commission of offence i.e. homicidal death of the deceased Balu, which he was bound to furnish before cremation of the dead body and, therefore, he was punished under section 176 of the IPC. However, he did not award any separate sentence on that count.

9. The State of Maharashtra has filed this appeal being aggrieved by the said judgment and order so far as it acquits the accused of the charges. So far as conviction of accused 4 is concerned, he has been convicted under section 201 of the IPC and sentenced to suffer R.I. for 15 days and also to pay a fine of Rs.500/- in default to suffer further R.I. for one month. After perusing the evidence on record, we are convinced that the learned judge is absolutely right in convicting the accused under section 201 of the IPC. Mr. Thakur, the learned Addl. P.P. appearing for the State submitted that the sentence

awarded is inadequate. However, since the State has not filed any appeal for enhancement of the sentence, this court cannot enhance the punishment. Mr. Thakur, however, tried to persuade us to issue notice to accused 4. The incident in question had taken place in the year 1987. About 17 years have elapsed. In the circumstances, we do not think that this is a fit case where such a notice could be issued.

10. So far as accused 2 and 3 are concerned, the learned Addl. P.P. has rightly not pressed the appeal. We do not think that there is any material against these two accused to set aside their order of acquittal.

11. The main grievance of the learned Addl.P.P. is that so far as accused 1 is concerned, the trial court has wrongly convicted him under section 325 of the IPC. The learned Addl. P.P. contended that the prosecution has established a case against accused 1 under section 302 of the IPC. A case under section 302 is squarely made out by the testimonies of PW-1 and PW-2, who are the eye-witnesses. Accused 1 had mercilessly beaten the deceased with a lathi. In such circumstances, the learned judge ought to have convicted him under section 302 of the IPC. In any case, Mr. Thakur submitted that the learned judge should have atleast convicted accused 1 for an offence punishable under section 304, Part II of the IPC. Drawing our attention to Muddemal article - lathi, the learned Addl.P.P. submitted that the lathi,

undoubtedly, is a dangerous weapon. Deceased was 60 years old man. He was defenceless. For no rhyme or reason, accused 1 beat him on his head and caused severe injuries to him due to which he succumbed to death. The intention to cause death of the deceased must be attributed to accused 1 and, therefore, accused 1 should be atleast punished under section 304, Part II of the IPC. In support of his submission, the learned Addl.P.P. has relied on the judgment of the Supreme Court in **Rattan Lal v. State of Madhya Pradesh, JT. 2002 (7) SC 627**.

12. Mr. Kate, the learned counsel for the accused on the other hand submitted that accused 1 has rightly been convicted for offence under section 325 of the IPC. He drew our attention to the evidence of PW-1 Banubai, where she has stated that after accused 1 gave stick blows on the head of the deceased, the deceased fell down. The learned counsel has also drawn our attention to the panchnama where it is stated that there were blood stains at the scene of offence. The learned counsel then drew our attention to the evidence of PW-12 A.S.I. Damodhar Deshmukh, who has registered the offence. PW-12 A.S.I. Deshmukh has stated in his evidence that when he visited the scene of offence, he found that there were blood stains on the stones. He was unable to remove the stones because they were in the shape of rocks. They were not portable. The learned counsel contended that, therefore, there is every possibility that the deceased died because of the fall on huge stones and impact thereof. The

learned counsel has drawn our attention to the photographs of the stones which form part of the record. Mr. Kate, therefore, submitted that in the absence of medical evidence and considering the other attendant circumstances, accused 1 could not have been convicted under section 302 or section 304, Part II of the IPC. Intention also cannot be attributed to him. Hence, conviction under section 325 may not be disturbed.

13. We have given our anxious consideration to the submissions advanced by both sides. We are unable to agree with the learned Addl.P.P. that accused 1 should be convicted under section 302 of the IPC. The factual matrix of the case leads us to this conclusion. It appears that the accused were not very happy with the fact that PW-1 Banubai was working with the deceased, who was their uncle. They had repeatedly told her to stop working for the deceased. However, PW-1 Banubai was adamant. On the day of the incident, they had gone to the house of the deceased to teach a lesson to PW-1 Banubai. In fact, it is the prosecution case that accused 2 and 3 attacked PW-1 Banubai with sticks. When the deceased pushed accused 2 and 3 outside the house, accused 1 was angered. At the spur of the moment, out of sudden feat of anger, he seems to have attacked the deceased. After having a look at the weapon of assault, we are inclined to agree with the learned Addl.P.P. that the said weapon of assault used by accused 1 must be described as a dangerous weapon. It cannot be described

as a stick. It can more appropriately be described as a lathi. But the fact remains that the evidence does not show that accused 1 had planned to commit murder of deceased Balu. In fact, the prosecution witnesses have admitted that the deceased had given all his properties to the accused. If at all, there was any dispute that appears to be only regarding PW-1 Banubai's working with the deceased as maid. The accused wanted to stop PW-1 Banubai from working in the house of the deceased because, according to PW-1 Banubai they felt that there was illicit relationship between her and the deceased. There is no medical evidence on record to indicate what type of injuries were caused to the deceased. It is not clear whether he died because of those injuries. Both the eye-witnesses have stated that the deceased fell down. PW-12 ASI Deshmukh has stated that at the scene of offence there were blood stains on the stones and he could not remove them because they were in the shape of rocks. We have seen the photographs of the stones. They are part of the record. The stones are indeed huge. It is quite possible that the deceased died because he fell on huge rocks and sustained injuries because of the stones. Hence, accused 1 cannot be convicted under section 302 of the IPC. Nor can he be convicted under section 304 part I or II of the IPC. At the same time, the weapon of assault used by accused 1 is a dangerous weapon. The trial court has convicted accused 1 under section 325 of the IPC. We feel that the order of acquittal of accused 1 under section 302 of the IPC must

be set aside but accused 1 must be convicted for a lesser offence i.e. under section 326 of the IPC. Hence, the following order:

O R D E R

"The impugned judgment and order dated 8/7/1988 passed by the Additional Sessions Judge, Pune in Sessions Case No.47 of 1988 to the extent it acquits respondent 1 (original accused 1) Anil Tanhu Dhamunse under section 302 of the IPC is set aside. Accused 1 Anil Tanhu Dhamunse is convicted for a lesser offence under section 326 of the IPC instead of under section 325 of the IPC. Sentence already undergone by him is treated as sentence for the said offence. However, in addition, accused 1 Anil Tanhu Dhamunse shall pay a fine of Rs.7,500/-. In default of payment of this fine, he shall undergo three months rigorous imprisonment. He shall pay the fine within eight weeks from today in the trial court. The rest of the impugned judgment and order is maintained.

Appeal is disposed of in the aforestated terms."

(SMT. RANJANA DESAI, J.)

(A.S. OKA, J.)